

LIBRA MINING AND MINERAL CORP.  
FLOYD ROBERTSON

IBLA 92-103, 92-135

Decided december 10, 1993

Appeal from a decision of the Nevada State Office, Bureau of Land Management, reinstating the full force and effect of a prior decision declaring millsite NMC 257196 abandoned and void.

Vacated.

1. Millsites: Generally--Mining Claims: Millsites--Mining Claims: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold

The failure of the owner of a millsite to file an annual notice of intention to hold the millsite is a curable defect and before BLM declares a millsite abandoned and void for failure to make such a filing, it must provide the owner notice and an opportunity to cure the defect.

2. Millsites: Generally--Mining Claims: Millsites--Mining Claims: Recordation of Assessment Work or Notice of Intention to Hold

Where BLM declares a millsite abandoned and void following a failure by the owner of the millsite to respond to a notice of an annual filing deficiency, and later vacates that decision, concluding that the annual filing had been made, it may not subsequently retroactively reinstate the abandoned and void decision. Notice and an opportunity to cure must be given, and, if no filing is made in response thereto, a new decision must be issued. The effective date of abandonment will run from the date of that new decision.

APPEARANCES: Mildred Kaunas, President, Libra Mining and Mineral Corporation, Victorville, California; Floyd Robertson, Searchlight, Nevada, pro se; T.D. Barnes, President, Geneva Minerals, Inc., Searchlight, Nevada, adverse party.

## OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Libra Mining and Mineral Corporation and Floyd Robertson have each filed separate appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated October 9, 1991, declaring the above-listed millsite abandoned and void.  
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On September 26, 1982, Leonard Phillips located a 5-acre millsite designated as the "Nevada Cobalt Re & Dev Co., Inc. # 1" in sec. 26, T. 28 S., R. 64 E., Mount Diablo base line and Meridian. 2/ The notice of location indicated that the millsite was being located in connection with the Nevada Cobalt Research and Development Company, Inc. #1 lode mining claim. Upon timely recordation, BLM assigned the millsite recordation number NMC 257196. Pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1988), and Departmental regulation 43 CFR 3833.2-2(c), Phillips was required to file with the proper office of BLM a notice of intention to hold the millsite on or before December 30 of each calendar year thereafter.

[1] In Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981), the Board held that section 314 of FLPMA, 43 U.S.C. § 1744 (1988), requires the filing of notices of location for millsites and tunnel sites, and that there is no statutory requirement for the annual filing of notices of intention to hold such sites. The Board pointed out that with regard to annual filings on millsites located after October 21, 1976, the annual filing requirement was imposed only by Departmental regulation 43 CFR 3833.2-1 (1981) (now 43 CFR 3833.2-2(c)). In Feldslite, the Board noted that "a failure to comply timely and scrupulously with the express statutory requirements cannot be waived by the Department," but held that a claimant's "failure to comply promptly with those requirements based on purely regulatory language is subject to curative action." 56 IBLA at 82, 88 I.D. at 645. The Board has subsequently held that owners of millsites must be given notice of a deficiency and an opportunity to correct it before their millsites may be deemed void for failure to comply with

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1/ T.D. Barnes, President of Geneva Minerals, Inc., a company claiming, through conflicting millsites, an interest in the same lands involved in this case, filed an answer to the statement of reasons filed by Robertson. Barnes seeks dismissal of Robertson's appeal for failure to file a timely statement of reasons for appeal. Failure to file a timely statement of reasons subjects the appeal to summary dismissal. 43 CFR 4.402(a). In this case, Robertson's statement of reasons was not untimely. Even if it were, dismissal is discretionary, and Barnes has failed to show prejudice based on the alleged untimely filing.

2/ The notice of location for the millsite indicates that Phillips was acting as agent for and was President of "Nevada Cobalt Research & Development Co., Inc." The record shows that on Apr. 20, 1984, "Nevada Cobalt Research & Development Co." changed its corporate name to "United States Cobalt."

FLPMA's filing requirement. Jean Emanuel Hatton, 107 IBLA 47 (1989); Red Top Mercury Mines, Inc., 96 IBLA 391 (1987), aff'd, Red Top Mercury Mines, Inc. v. United States, 887 F.2d 198 (9th Cir. 1989); Ptarmigan Co., 91 IBLA 113 (1986), aff'd, Bolt v. United States, 994 F.2d 603 (9th Cir. 1991).

In this case, BLM noted in its decision, and the record shows, that no notice of intention to hold this millsite had been filed for the years 1983-88. On August 2, 1989, BLM issued a notice requesting that a notice of intention to hold be filed for 1987 and 1988. 3/ The notice was sent by certified mail to a post office box in Searchlight, Nevada, addressed to "U.S. Cobalt Co., Inc." It was returned by the U.S. Postal Service as unclaimed. The post office box was a common address utilized by Phillips and the corporation in a mining claim annual filing made for certain mining claims in 1986, including the Nevada Cobalt Research and Development #1 mining claim. Subsequently, the notice was again sent to "U.S. Cobalt Co., Inc." at a post office box in Nelson, Nevada. It was also returned unclaimed. On September 7, 1989, BLM declared the millsite as abandoned and void because of the failure to provide the requisite notices of intent.

In a decision dated October 30, 1989, directed to U.S. Cobalt Company, Inc., BLM vacated its September 7, 1989, decision, simply stating that "[t]he record indicates that the annual filing in question was timely filed and the subject claim is in conformance with the requirements of 43 CFR 3833." 4/ A copy of that decision was sent to Libra Mining and Mineral Corporation, which according to BLM's October 9, 1991, decision, had filed "a notice of intent to hold the mill site \* \* \* on October 26, 1989." 5/

On October 9, 1991, BLM issued the decision challenged in the present appeals. Therein, BLM stated:

Recent events and inquiries into this case have caused us to reevaluate actions previously taken which affect this case, and

3/ In James J. Kohring, 89 IBLA 345, 348 (1985), this Board held that where BLM fails to notify the owner of a millsite of a filing deficiency, and to request a curative filing, prior to the submission of annual notices in subsequent years, BLM has effectively waived the defective filing and it may not declare the millsite abandoned and void because of the absence of that document from the file.

4/ That decision erroneously refers to "your mining claim, Nevada Cobalt Research & Development Co., Inc. No. 1." The decision references "NMC 257196," however, which is the Nevada Cobalt Re & Dev. Company, Inc. #1 millsite.

5/ Although the case record contains a copy of a "Receipt and Accounting Advice," dated Oct. 26, 1989, indicating receipt of a notice of intention to hold, the case record does not include that document.

we conclude that the decision of August 7, 1989, was issued in error. [6/] We are hereby reinstating the full force and effect of the decision dated September 7, 1989, which declared the NMC-2571196 mill site abandoned and void.

We are taking this action because upon examination of our records, Libra Mining and Minerals Corporation, who filed the notice of intention to hold, has no relationship to or any agency agreement with the owner of the claim (43 CFR 3833.2-5(c)). According to our records, the record owner is U.S. Cobalt Co., Inc., and that entity has not attempted to cure the annual filing deficiency or relocate the mill site.

Numerous documents have been presented to this office purporting to show a change in ownership to the mill site. The claim was not a properly recorded and maintained claim and was considered abandoned and void on December 7, 1989, the date of a Sheriff sale of this mill site to Floyd Robertson. Libra is claiming an ownership interest in a mill site known as Nevada Cobalt R-D-1, but it is unclear as to whether they are claiming ownership to mill site Nevada Cobalt Research and Develop. Co. Inc. #1 serialized NMC257196. It is clear that Mildred Kaunas has located a mill site and called it the NV Cobalt RD #1. That claim was located on April 27, 1989, by Mildred Kaunas, recorded with the Bureau of Land Management on May 19, 1989, serialized as NMC553151 (NV Cobalt RD #1) and located in T.28 S., R.64 E., Sec 26, SE1/4SE1/4SE1/4NE1/4, NE1/4NE1/4NE1/4SE1/4. [Emphasis in original.]

[2] BLM's October 9, 1991, decision must be vacated. As indicated above, the failure to file a notice of intention to hold a millsite is a curable defect, and only after notice and an opportunity to cure may BLM declare a millsite claim abandoned and void for failure to file a notice of intention to hold. While BLM provided notice in August 1989 regarding a deficiency in the filing of notices of intention to hold NMC 257196, and thereafter, in September 1989 declared the millsite abandoned and void, it vacated that decision in October 1989. A vacated decision holding a millsite claim abandoned and void for failure to file a notice of intention to hold may not be retroactively reinstated.

In order to declare a millsite abandoned and void for failure to file notices of intention to hold, BLM must provide the owner of the millsite with notice and an opportunity to cure. In the event of a failure to respond properly to such a notice, a new decision must be issued, and the effective date of abandonment can only run from the date of that new decision. The rationale for such a conclusion is that until BLM takes action under the regulation governing filings for millsite claims there can be no abandonment for failure to file. This is in contrast to the

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6/ No decision dated Aug. 7, 1989, appears in the record.

failure to file evidence of annual assessment work or a notice of intention to hold a mining claim, which, as indicated, has the result of extinguishing the claim by operation of law notwithstanding the claimant's intent to hold the claim. See United States v. Locke, 471 U.S. 84 (1985). Moreover, where BLM vacates a decision declaring a millsite abandoned and void and holds that the millsite is in conformance with the annual filing requirements, as it did in this case, the official records reflect that fact and actions may be taken in reliance thereon.

In this case, when BLM determined more than 2 years after vacating its September 7, 1989, decision that it had done so in error, it was required to provide the owner of NMC 257196 with notice and an opportunity to cure, rather than retroactively reinstating its earlier decision. Accordingly, because BLM did not provide the requisite notice in this case, its October 9, 1992, decision must be vacated.

In addition to the claims of ownership of NMC 257196, the following appear of record relating to the same lands described by NMC 257196:

NMC 275144 The Cobalt #4 Mill Site #1, located by Phillips on July 11, 1983, which is an amended location of NMC 257196, changing only the name of the mill site and the date of location.

NMC 507949 The Mad Dog No. 1 Mill Site, located by Donald H. Woolbright on August 18, 1988.

NMC 553151 The Nevada Cobalt R D #1 Mill Site, located by Mildred Kaunas on April 27, 1989, designated as NMC 553151.

The BLM decision also lists as conflicting millsites "NMC 31009 (Geneva #18) \* \* \* NMC 31010 (Geneva #19) located \* \* \* by T.D. Barnes as president of Geneva Minerals, Inc., on July 3, 1986." The files forwarded to the Board include those for NMC 31009 and NMC 31010. Those recordation numbers, however, do not correspond to the Geneva millsites. Those numbers relate to the Selox #490 and Selox #491 lode mining claims located by Amselco Minerals, Inc., in July 1978. Other documents in the record indicate that the correct recordation numbers for the Geneva millsites may be NMC 371009 and NMC 371010. 7/

Nevertheless, regardless of what is reflected on the records of BLM concerning the ownership of these millsites, the official depository for records concerning the title to mining claims and millsites is the local recording offices in the state where the claims or millsites are located. See United States Borax & Chemical Corp., 98 IBLA 358, 359 (1987); 43 CFR 3833.0-1(d).

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7/ Should BLM again determine it necessary to give notice and an opportunity to cure a filing deficiency for NMC 257196, it may want to seek guidance from the Office of the Solicitor.

Where the question of ownership of a mining claim or millsite is presented in a patent application proceeding, the Department may decide who is entitled to a patent. See David J. Bartoli, 123 IBLA 27, 41-42, 99 I.D. 55, 62-63 (1992). However, the Department has a consistent policy of declining to intervene in private disputes, especially when resolution of the dispute, as in the case of title to a mining claim or millsite, depends on interpreting state law. Id. In this case, it is clear that various parties claim ownership of the land embraced by NMC 257196. Resolution of those claims is properly a matter for the courts.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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James L. Byrnes  
Chief Administrative Judge